Supreme Court, U.S.
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No. 05-051132

In The
Supreme Court of the United States

GEORGE MURRAY,

Petitioner,

v.

ROBERT BUTLER, individually and As Mayor of Marion, Illinois; MARION, ILLINOIS, a Governmental Entity; GENE GOOLSBY, individually and as Chief of Police designate for the City of Marion, Illinois

Respondents,

and

TONDINI WRECKER AND TOWING SERVICE,

Defendant,

On Petition for Leave to Appeal to the Supreme Court of Illinois

PETITION FOR A WRIT OR CERTIORARI

GEORGE MURRAY
P. O. Box 341
DuQuoin, IL 62832
(618) 318-1688
Petitioner

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Fifth District Illinois Appellate Court improperly refused to consider plaintiff's argument that the Ordinance under which plaintiff's automobiles were seized is unconstitutional?

2. Whether Marion City Ordinance No. 1759 is unconstitutional because it is overly broad, contradictory, and an unreasonable exercise of the City's police power?

LIST OF PARTIES

Plaintiff / Petitioner - George Murray, *Pro Se*, P. O. Box 314, DuQuoin, Illinois 62832, (618) 318-1688.

Defendants / Respondents - Robert Butler; Marion, Illinois; and Gene Goolsby.

Attorney - James C. Cook, Esq., Williams & Walker, P.C., 4343 West Main Street, Belleville, Illinois 62226, (618) 277-1000.

The remaining defendant, Tondini Wrecker and Towing Service, has no interest in the outcome of this proceeding because it did not participate in the lower court proceedings.

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CITATION OF LOWER COURT DECISIONS

1. *Murray v. Butler, et al.*, No. 5-04-0020, Fifth District Illinois Appellate Court (3/21/05) (unreported decision pursuant to Illinois Supreme Court Rule 23).

2. *Murray v. Butler, et al.*, No. 100478, Illinois Supreme Court denial of plaintiff's petition for leave to appeal (9/29/05).

JURISDICTION

The Illinois Supreme Court denied petitioner's for leave to appeal to that court on September 29, 2005. This petition for writ of certiorari is filed pursuant to United States Supreme Court Rule 13, which provides that a petition for writ of certiorari is the appropriate method by which the judgment of a state court of last resort may be had. Petitioner is within the 90 days for filing this petition for writ of certiorari.

CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED

Marion (Illinois) City Ordinance No. 1759 (full test set out in Appendix, pages A- through A-.

U. S. Const. amend. V: "No person shall be ***deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

U. S. Const. amend. XIV, § 1: "Citizenship rights not to be abridged by states. Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATE OF THE CASE

Procedure in the Lower Courts

On November 3, 2003 the Circuit Court of Williamson County, Illinois, granted a motion for summary judgment filed by defendants (respondents herein) Robert Butler, sued individually and as Mayor of the City of Marion; the City of Marion, Illinois; and Gene Goolsby, who was sued individually. Appendix, pp. A-1 through A-5. Petitioner obtained a ruling from the Circuit Court on December 16, 2003, certifying that the November 3, 2003, grant of summary judgment was appealable pursuant to Illinois Supreme Court Rule 304(a). Appendix, p. A-6. On January 8, 2004 petitioner filed his notice of appeal pursuant to Illinois Supreme Court Rule 304(a).

On March21, 2005, the Fifth District Illinois Appellate Court issued a Rule 23 Order affirming the Order of the Circuit Court of Williamson County granting summary judgment in favor of the favor of the before-named defendents. Appendix, pp. A-7 through A-23.

On September 29, 2005, the Illinois Supreme Court denied petitioner's petition for leave to appeal to that court. Appendix, p. A-24. It is from the denial of the petition for leave to appeal to the Illinois Supreme Court that petitioner now files this petition for writ of certiorari.

STATEMENT OF FACTS

The City of Marion has an ordinance (Ordinance No. 1759) that grants the Marion Police Department the right to have abandoned or derelict vehicles towed pages, and it contains numerous exceptions and inconsistencies. C 101-109, App. A-25 - A-33. (All references to the record are designated a C___ and refer to the record as filed in the Illinois Appellate and Supreme Courts.) Petitioner will provide additional details about the ordinance an its exceptions in the argument section of this petition. On June 11, 2001, the City of Marion seized and towed away from petitioner's private property two antique vehicles owned by petitioner. The City claimed authority for the seizure pursuant to Ordinance No. 1759. C 86, C 19.

On June 3, 2002, petitioner filed his complaint against Robert Butler, individually and as Mayor of Marion; the City of Marion; Gene Goolsby, as the Chief of Police designate for the City of Marion (the City defendants); and Tondini Wrecker & Towing Service (Tondini). (Tondini did not participate in the lower court appeals.) In his complaint, petitioner alleged that on June 11, 2001, he owned a 1964 Dodge Dart and a 1963 American Motors vehicle and that both of them were parked on a lot he owned in the City of Marion. C 19. Petitioner alleged that both of those vehicles were removed from his lot without his consent or knowledge and that the defendants continued to hold his property without his permission or consent. C 19.

Petitioner alleged that he did not receive proper notice of the taking under Ordinance No. 1759 and that the defendants' "failure to adhere to Ordinance No. 1759" deprived him of an opportunity to redeem his vehicles and prevent their loss. C20. Petitioner alleged that he was deprived of his property by defendants without notice or hearing in violation of the Constitutions of the United States and the State of Illinois. C 21. Finally petitioner alleged that de-fendants Butler and Goolsby acted with malice aforethought that constituted willful and wanton negligence. C 22.

On March 4, 2003, petitioner's attorney filed a motion to withdraw as counsel (73), which was granted on March 26, 2003. C 77.

On June 27, 2003, the City defendants filed a motion for summary judgment alleging that Ordinance No. 1759, enacted March 27, 2000, makes it unlawful to leave abandoned or derelict vehicles in the City and,

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under that ordinance, the City had authority to tow petitioner's vehicle away from his lot. C 81-109.

In their motion for summary judgment, the city defendant alleged that the affidavit of Gene Goolsby, attached to the motion established compliance with the ordinance and that Petitioner made n effort to claim the vehicles. C 82. The City defendants claime immunity under the Illinois Vehicles Code and the Tort Immunity Act C 82-84. Finally, the motion alleged that Petitioner could not clain that he had been deprived of either procedural or substantive du process. C 82. Attached to the motion was Gene Goolsby's affidavit. (85-86

On July 21, 2003, a letter from petitioner to the trial judge wa filed in the trial court record. C 111. In the letter, petitioner asked for a extension of time to reply to the motion and to set the hearing date ove until later. The City defendants replied in objection. C 113.

On August 4, 2003, Petitioner filed a letter in response to tha objection. C 115. In the response, Petitioner stated that he had bee working on his response but that he simply did not have it completed a that time. He suggested that he would be ale to complete it if the cou gave him a little more time.

> "Being in this case, *pro se*, not by choice, is a decide disadvantage for me. I fail to see how the defendants are pre judiced by my being allowed a small amount of more time t complete my response. As I recall, Mr. Cook was seven or eigl days late in filing his pleading within the required 30 days aft the defendants were served with process. If the court will allo it, I promise that I will have my response completed by the dat that the court will set." C 115.

The court granted Petitioner's request and reset the case.

On September 3, 2003, Petitioner filed a pro se response to th City defendants' motion for summary judgment. C 117-125. In th response, Petitioner denied each and every one of the defendant affirmative defenses. C 117. Petitioner challenged Goolsby's affidav on the basis that it was motivated by bias and prejudice again Petitioner, a "property owner and real estate taxpayer for over 4 years." C 117. Petitioner alleged that the determination that th vehicles were derelict was false. C 117. Petitioner alleged that th statement that the vehicles were not licensed was false, "because the

1964 Dodge was licensed with current tags at the time," but that those tags were kept off of the vehicle to prevent their theft. C 118. Petitioner alleged that he had lost or misplaced the title to the 1963 Rambler, "causing an extended delay in getting the matter resolved." C 118. Petitioner challenged the statement in the affidavit that the vehicles were full of "junk" inside was actually "furniture, auto parts, tools, clothing, and other valuable property" of the petitioner. C 18.

Petitioner challenged the notification procedure of the ordinance as unreasonable and vague in that it required the vehicle owner to respond within seven days from the date the notice was mailed, but that the owner might not have received the certified mail within seven days. C 118. petitioner further alleged that the ordinance was unreasonable in that it allowed a notice to be served on the owner or some other person and the City did not have to establish whether the notice was actually received if it was mailed. C 118.

Petitioner argued that a statement in Goolsby's affidavit that petitioner had not sought to reclaim the vehicles from storage was incorrect, that his private property had been illegally taken, and that he had been greatly damaged. C 119, C 123. Petitioner alleged that he had repeatedly told the defendants that he wanted his property returned, but that those requests were always refused. Petitioner indicated that his evidence would support his allegations. C 123.

Petitioner argued that he had not violated the Illinois Motor Vehicle Code because his vehicles were not abandoned, they were not derelict, and the vehicles were located on his private property. Petitioner alleged that the Motor Vehicle Code does not apply to vehicles on the owners' property. 625ILCS 5/4-201, 203; C 123. As a result, petitioner argued that the immunity provisions cited by the City defendants in their affirmative defenses (C 65), and in their motion for summary judgment (C 82), were irrelevant to the City's act of towing his vehicles from his private property. C 123-24. Petitioner also argued that the immunity provision of the Motor Vehicle Code (625 ILCS 5/4-213) applies only to cities of over 500,000 inhabitants, of which the City of Marion is not one. C124. See 625 ILCS 5/4-212.1. Additionally, petitioner alleged that his 1964 Dodge Dart and 1963 Rambler" were over 25 years of age, were historical vehicles, were antique collectible cars, and the exception found in the ordinance, section 1, subparagraph (A), should apply." C 123.

Petitioner asserted that the case posed many questions of fact that should be determined by a jury and theat the court should adhere to the well settled law that summary judgment is a drastic remedy that should be